

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**DOCKET NO. 16-CRB-0009 CD
(2014-17)**

**MOTION FOR FURTHER PARTIAL DISTRIBUTION OF 2016 AND 2017
CABLE ROYALTIES TO MUSIC CLAIMANTS BMI, ASCAP, AND SESAC**

Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors and Publishers (“ASCAP”) and SESAC Performing Rights, LLC (“SESAC”) (hereafter collectively the “Moving Music Claimants”) hereby move the Copyright Royalty Judges (“Judges”) pursuant to 17 U.S.C. § 801(b)(3)(C) to order a further partial distribution of the 3.525% share allocated to the Music Claimants category in the 2016 and 2017 cable royalty funds (the “Music Category Share”). Specifically, the Moving Music Claimants request a further partial distribution of all but 1.5% of the undistributed Music Category Share of the 2016 and 2017 cable royalty funds. All participants in the Music Claimants category for these two cable fund years, including non-movant Global Music Rights, LLC (“GMR”), agree 1.5% is sufficient to resolve outstanding Distribution Phase controversies in the Music Claimants category in this proceeding (the “Proceeding”).

I. BACKGROUND

Historically the Music Claimants category in cable royalty distribution proceedings has been comprised of three performing rights organizations (“PROs”) – BMI, ASCAP and SESAC – as defined in the Copyright Act, *see* 17 U.S.C. § 101, and identified here as the Moving Music Claimants. GMR, a newer PRO, filed claims in respect of both the 2016 cable royalty funds (the

“2016 Cable Funds”) and the 2017 cable royalty funds (the “2017 Cable Funds”).¹ Although there are no Distribution Phase controversies among Moving Music Claimants for cable years 2016 and 2017, Distribution Phase controversies do remain as between Moving Music Claimants and GMR for 2016 and 2017.²

Moving Music Claimants participated in prior motions for partial distribution filed by the Allocation Phase parties as respects both the 2016 Cable Funds and the 2017 Cable Funds.³ As a result, Moving Music Claimants received the Music Category Share of the 50% partial distribution ordered for the 2016 Cable Funds, and the Music Category Share of the 40% partial distribution ordered for the 2017 Cable Funds.⁴

On June 29, 2022, all Music Claimants in the instant Proceeding – including GMR – gave notice to the Judges that a final settlement had been reached between Music Claimants and all

¹ See Global Music Rights, LLC’s Petition to Participate, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-2017) (March 8, 2019); Supplement to Petition to Participate, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-2017) (March 11, 2019) (submitted by GMR).

² See Music Claimants’ Notice of Controversies Relating to the 2014-2017 Cable Royalty Funds, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-2017) (July 19, 2021) (submitted by BMI, ASCAP, and SESAC); Global Music Rights, LLC’s Notice of Controversy, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-2017) (July 19, 2021).

³ See Motion of the Allocation Phase Parties for Partial Distribution of 2016 Cable Royalty Funds, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009 CD (2014-17) (May 18, 2018); Motion for Partial Distribution of 2017 Cable Funds, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009 CD (2014-17) (March 15, 2019).

⁴ See Order Granting Motion for Partial Distribution, *In re Distribution of Cable Royalty Funds*, Docket No. 17-CRB-0017 CD (2016) (July 30, 2018) (granting 50% partial distribution); Order Granting Motion for Partial Distribution, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009 CD (2014-17) (May 22, 2019) (granting 40% partial distribution).

other Allocation Phase parties⁵ in cable royalty years 2014-2017. *See* Joint Notice of Settlement Regarding 2014-2017 Royalty Claims of Music Claimants and Motion for Final Distribution of 2014 and 2015 Royalties to Music Claimants, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009 CD (2014-17) (June 29, 2022) (the “Joint Notice and Motion”). The parties stated that “they all stipulate and agree that Music Claimants shall receive a share of each of the 2014, 2015, 2016, and 2017 cable royalty funds” as follows:

Year	Basic Fund	3.75% Fund	Syndex Fund
2014	3.525%	3.525%	3.525%
2015	3.525%	3.525%	3.525%
2016	3.525%	3.525%	3.525%
2017	3.525%	3.525%	3.525%

Id. This share is “off the top” and “net of the final distribution previously awarded to NPR” of 0.16% for the years in question. *Id.* In addition, the parties requested “that the Judges order a final distribution of royalties to Music Claimants BMI, ASCAP, and SESAC for the years 2014 and 2015” in the above-specified shares, as there was no controversy within the Music Claimants category for those years. *Id.*; *see* n.2.

The Judges granted the joint request for final distribution to BMI, ASCAP and SESAC in December 2022. *See Order Granting Motion for Final Distribution to Music Claimants BMI, ASCAP, and SESAC*, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009 CD

⁵ The signatories to the Joint Notice and Motion included Program Suppliers represented by the Motion Picture Association, Inc. (“MPA”), the Joint Sports Claimants (“JSC”), the National Association of Broadcasters and the Commercial Television Claimants (“CTV”), the Music Claimants,¹ the Canadian Claimants Group (“CCG”), Settling Devotional Claimants (“SDC”), National Public Radio, Inc. (“NPR”), Public Broadcasting Service and the Public Television Claimants (“PTV”), Multigroup Claimants (“MC”), and Major League Soccer, L.L.C. (“MLS”).

(2014-17) (December 27, 2022) (the “December 27, 2022 Order”). The Judges noted the moving parties’ observation that, since GMR had filed claims in cable years 2016-17 and controversies remained, a final distribution motion for those years would be filed at a later date. *See* December 27, 2022 Order at 2 n.3, citing Joint Notice and Motion at 3 n.4.

The Moving Music Claimants represent that they have continued to negotiate in good faith with GMR regarding cable royalty years 2016 and 2017, but that no resolution has been reached and is not immediately foreseeable. As a result, a substantial amount of funds remains undistributed in the Music Claimants category for these years. Given the desirability of timely distribution to the Moving Music Claimants’ members, and the comparatively small amount at issue in the Distribution Phase controversy, Moving Music Claimants seek a further partial distribution of the 2016 Cable Funds and 2017 Cable Funds.

Moving Music Claimants have conferred with GMR, and GMR has agreed not to object to the instant motion so long as a reserve of 1.5% of the Music Category Share is retained for each of the 2016 and 2017 cable royalty years. Although Moving Music Claimants do not concede a retainage as high as 1.5% is necessary, Moving Music Claimants do agree that 1.5% more than suffices to protect GMR’s interests, and have agreed to specify 1.5% as the portion of the Music Category Share to be retained in this motion.

Therefore, Moving Music Claimants request further partial distribution of all but 1.5% of the Music Category Share of the 2016 and 2017 cable royalty funds.⁶ The amount to be distributed

⁶ Based on data published by the Licensing Division, the 2016 Cable Funds totaled \$209,650,385.80 as of November 30, 2022 and \$211,203,179.95 of the 2017 Cable Funds, as of November 30, 2022. *See* Year-Over-Year Growth in the Copyright Royalty Funds as of November 30, 2022 (Unaudited), <https://www.copyright.gov/licensing/copyright-royalty-funds.pdf> (last visited March 2, 2023). Based on these figures, and after deducting NPR’s 0.16% share, the Music Category Share of the 2016 Cable Funds is \$7,378,351.82, and the Music Category Share of the 2017 Cable Funds is \$7,433,000.23.

should be reduced by the prior partial distribution to Moving Music Claimants of the Music Claimants category's portion of 50% of the 2016 Cable Funds and 40% of the 2017 Cable Funds.⁷

Moving Music Claimants defer to the Licensing Division of the Copyright Office to make this calculation. However, based on the figures set forth in footnotes 6 and 7, Moving Music Claimants calculate a 1.5% retainage as \$110,675.28 for the 2016 Cable Funds and \$111,495.00 for the 2017 Cable Funds, as a result of which Moving Music Claimants should receive a further partial distribution (after deducting that 1.5% and their prior partial distribution) of [REDACTED] of 2016 Cable Funds and [REDACTED] of 2017 Cable Funds.

Moving Music Claimants request that this distribution be ordered as soon as feasible.

II. THE JUDGES HAVE AUTHORITY TO ORDER PARTIAL DISTRIBUTIONS

Section 111 of the Copyright Act favors the early distribution of cable royalties. *See* 17 U.S.C. § 111(d)(4)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties can be made at any time after the filing of claims. *See* Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2d Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to order partial distributions of statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . may, upon motion of one or more of the claimants and after publication in the *Federal Register* of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period

⁷ The actual partial distribution received by Moving Music Claimants totaled [REDACTED] of the 2016 Cable Funds and [REDACTED] of the 2017 Cable Funds.

beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants —

- (i) agree to the partial distribution
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file that agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C).

Here, the statutorily prescribed deadline for filing claims has now passed. All claimants in the Music Claimants category have resolved all Allocation Phase controversies with all other parties for cable royalty years 2016 and 2017. *See* Joint Notice and Motion; *see also* December 27, 2022 Order. Furthermore, Moving Music Claimants (1) agree to the partial distribution; (2) agree that the requested amounts are available for distribution; (3) agree to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Judges or the Copyright Office; and (4) agree to file such an agreement with the Judges or as otherwise directed. Finally, there can be no “reasonable objection to the partial distribution,” because the only party that could conceivably object to partial distribution, GMR, has indicated that it will not object so long as 1.5% remains of the Music Category Share of the 2016 Cable Funds and 2017 Cable Funds, which is consistent with the partial distribution requested in this motion.

III. PARTIAL DISTRIBUTION OF ALL BUT 1.5% OF THE UNDISTRIBUTED MUSIC CATEGORY SHARE OF THE 2016 AND 2017 CABLE ROYALTY FUNDS IS REASONABLE AND APPROPRIATE

The Judges have consistently granted the motions for partial distributions of the annual cable royalty funds where no reasonable objection is stated. *See, e.g., Order Granting Moving Parties' Motion for Partial Distribution of 2019 Cable Royalties*, Docket No. 20-CRB-0010 CD (2019) (Aug. 9, 2021) (determining that distribution of 40% of cable royalty funds is “reasonable and appropriate”); *Order Granting Moving Parties' Motion for Partial Distribution of 2018 Cable Royalties*, Docket No. 19-CRB-0010 CD (2018) (Aug. 20, 2020) (same).⁸ Indeed, the Copyright Office has previously determined that higher partial distribution percentages were reasonable and appropriate under the circumstances. *See, e.g., Order*, Docket No. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) (granting motion for partial distribution of 80% of 1992 and 1993 cable royalty funds) (“September 26, 1994 Order”); *Order*, Docket No. 2000-6 CARP CD 98 (Oct. 12, 2000) (granting motion for partial distribution of 75% of the available cable royalties on deposit

⁸ *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0009-CD (2014-17) (May 22, 2019) (finding request for 40% distribution of the 2017 cable royalty funds to be “reasonable and appropriate”); *Order Granting Motion for Partial Distribution*, Docket No. 17-CRB-0017-CD (2016) (July 30, 2018) (finding request for partial distribution of 50% of the 2016 cable royalties to be “reasonable and appropriate”); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0020 CD (2015) (June 6, 2017) (finding request for partial distribution of 60% of the 2015 cable royalty funds to be “reasonable and appropriate”); *Order Granting Motion for Partial Distribution*, Docket No. 16-CRB-0009 CD (2014) (Aug. 15, 2016) (finding request for partial distribution of 60% of the 2014 cable royalty funds to be “reasonable and appropriate”); *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0010 CD (2013) (May 28, 2015) (finding requested 60% partial distribution to be “reasonable and appropriate”); *see also Order Granting Motion of Phase I Claimants For Partial Distribution*, Docket No. 14-CRB-0007 CD 2010-12 (Dec. 23, 2014) (finding requested 60% partial distribution of 2012 cable funds to be “reasonable and appropriate”); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Cable Royalty Funds*, Docket No. 2012-9 CRB CD 2011 (Mar. 13, 2013) (granting Phase I Parties' request for a 50% partial distribution of the 2011 cable royalty funds); *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Cable Royalty Funds*, Docket No. 2012-4 CRB CD 2010 (Sept. 14, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 cable royalty funds).

for the 1998 cable royalty fund and acknowledging that retention of 25% of the available royalties would suffice to resolve any outstanding controversies related to those funds).

Here, though the resulting aggregate distribution of 98.5% of the cable royalties in the Music Claimants category represents the vast majority of the funds allocated to that category, there also is no dispute that Moving Music Claimants are entitled to such monies. A final Allocation Phase agreement has already been reached between claimants in the Music Claimants category and all other Allocation Phase parties with regard to 2016 and 2017 cable royalty funds. *See* Joint Notice and Motion. The only obstacle to distribution of *all* such monies to those in the Music Claimants category is the existence of a Distribution Phase controversy between Moving Music Claimants and GMR, which represents a very small fraction of the Music Category Share. GMR has agreed that a 1.5% retainage is sufficient to satisfy its claim. And in any event, Moving Music Claimants are each prepared to execute the required repayment agreement.

A partial distribution is also warranted in the interest of justice. Moving Music Claimants collectively represent over two million songwriters, composers, and publishers, who are heavily reliant on timely receipt of royalties for public performances. The music industry was particularly impacted by the recent pandemic, making timely receipt of funds all the more important. Moving Music Claimants have sought in good faith to resolve their controversy with GMR and will continue to do so, but there is no just reason to deprive millions of songwriters, composers and publishers of royalties that all parties, both within and outside the Music Claimants category, agree they should receive. Robust authority establishes that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.,* September 26, 1994 Order at 2, 5 (Office distributed 80% of the 1992 and 1993 cable royalties, noting that “intent of the law favored early distribution”) *see also* Order, Docket No. 94 CARP

(92-CD & 93-CD) at 2 (Sept. 12, 1994) (“September 12 , 1994 Order”) (referring to the “overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions”).

The requested distribution would ensure that songwriters, composers and publishers are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. As a final Allocation Phase resolution has already been reached in the Music Claimants category, and since the only party potentially affected by this distribution, GMR, has agreed not to object so long as 1.5% of the Music Category Share remains, this further partial distribution should be ordered.

IV. CONCLUSION

For the reasons set forth above, the Moving Music Claimants respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the Federal Register the proposed partial distribution of all but 1.5% of the undistributed Music Category Share of the 2016 Cable Funds and 2017 Cable Funds, and thereupon to order distribution of such funds.

Respectfully submitted,

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Dated: April 11, 2023

Certificate of Service

I certify that on April 11, 2023, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Brian A. Coleman
Brian A. Coleman

Proof of Delivery

I hereby certify that on Tuesday, April 11, 2023, I provided a true and correct copy of the Motion for Further Partial Distribution of 2016 and 2017 Cable Royalties to Music Claimants BMI, ASCAP, and SESAC - Public Redacted Version to the following:

Public Television Claimants, represented by Ronald G. Dove Jr., served via E-Service at rdove@cov.com

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